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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: **Notice of Ex Parte Submission** in CC
Docket No. 00-4, *Application of SBC
Communications Inc. Pursuant to Section 271 of the
Telecommunications Act of 1996 to Provide In-
Region, InterLATA Services in Texas*

Dear Secretary Salas,

Attached please find a copy of the Second Complaint of Birch Telecom of Texas Ltd., L.L.P. ("Birch") against Southwestern Bell Telephone Company ("SWBT") in Project 21000 before the Public Utility Commission of Texas. Please submit this document into the record in CC Docket 00-04, *Application of SBC Communications Inc. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*.

The attached complaint addresses SWBT's ordering, provisioning, and system failures and the competitive effects of these failures on Birch.

Should you have any questions about this matter, please call me at 512.236.1700. An original and one copy of this letter is being submitted to you for inclusion in the public record.

Sincerely,

RINA Y. HARTLINE / *BR KH*
Rina Y. Hartline
Director of State Regulation

cc: Audrey Wright
Bill Dever
Jessica Rosenworcel
Claire Blue
John Stanley
Larry Strickling

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June 26, 2000

Via Messenger

Administrative Law Judge Donna Nelson
Administrative Law Judge John Mason
Public Utility Commission of Texas
1701 North Congress Avenue, 7th Floor
Austin, Texas 78701

Re: Project No. 21000: Informal Dispute Resolution for Issues Relating to Operational Support Systems – Second Informal Complaint of Birch Telecom of Texas Ltd., L.L.P. Against Southwestern Bell Telephone Company

Dear Judges Nelson and Mason:

Concurrent with this letter, Birch Telecom of Texas Ltd., L.L.P. ("Birch") is filing a Second Complaint in Project 21000 utilizing the "Highly Sensitive, Confidential and Restricted" designation first identified in Project 16251.¹ Birch understands that information filed with this designation is required to be produced to the Commission alone – not to all parties having executed the Protective Order in that Project. As Project 21000 was an outgrowth of Project 16251, Birch believes that this Protective Order generally, and the availability of this heightened level of confidentiality specifically, extends to Project 21000 as well.

Birch requests that the Commission enter an Order confirming this understanding, specifically stating that the "Highly Sensitive, Confidential and Restricted" designation is available to Project 21000 and does apply to the information marked in the manner detailed in the Protective Order.

¹ Birch is providing both the Commission and SWBT with a copy of the information that has been designated as "Highly Sensitive, Confidential and Restricted" so as to be able to work through the issues identified in the Complaint. This is consistent with the intention and usage of the designation. For example, when SWBT utilized this designation in providing Track "A" information in Project 16251, SWBT provided all company information to the Commission, and company-specific information only to that company. A fully redacted copy was made available for filing in Central Records.

Letter to Judges Nelson and Mason
June 26, 2000
Page 2

Thank you and please do not hesitate to contact our office if you have any questions regarding this matter.

Very truly yours,

Rina Y. Hartline / by

Rina Y. Hartline
Abigail C. Klamert

Kathryn Benson
by permission

ATTORNEYS FOR
BIRCH TELECOM OF TEXAS LTD., L.L.P.

cc: Parties of Record

BIRCH TELECOM OF TEXAS LTD., L.L.P.
JUNE 26, 2000

PROJECT NO. 21000

INFORMAL DISPUTE RESOLUTION § PUBLIC UTILITY COMMISSION
FOR ISSUES RELATING TO §
OPERATIONAL SUPPORT SYSTEMS § OF TEXAS

**SECOND INFORMAL COMPLAINT OF
BIRCH TELECOM OF TEXAS LTD., L.L.P**

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ATTACHMENTS

Attachment A – SWBT/Birch Weekly Joint Coordination Conference Call Minutes (4/18/00 – 6/13/00).

Attachment B – Performance Measurement 35 Data, Trouble Rate of Orders within 10 Days of Conversion.

Attachment C – Birch Study of Orders Requiring LSC Manual Intervention (4/17/00 – 4/21/00).

Attachment D – SWBT/Birch Daily Operational Conference Call Log (4/24/00 – 6/21/00).

Attachment E – Agenda of Issues in Project 21000 Meeting Before the Commission, November 10, 1999, and Supporting Examples.

Attachment F – SWBT/Birch Joint Quality Assurance Study Guidelines and Sampling of 100 Orders Requiring LSC Manual Intervention (5/26/00 – 6/09/00).

Attachment G – Correspondence Detailing Inappropriate Comments Made By SWBT To A Birch Customer. (6/8/00)

Attachment H – Sample of SWBT Win-Back Customers Who Returned to SWBT from Birch.

INTRODUCTION

There are problems in paradise.¹ Big ones. And despite the significant and exhaustive efforts to work through Southwestern Bell Telephone Company's ("SWBT") performance issues, Birch Telecom of Texas Ltd., L.L.P. ("Birch") is quite plainly out of non-regulatory options. Without swift and firm Commission intervention, Birch is in danger of being crushed in the marketplace by the very vendor with whom it has been working diligently and cooperatively since September 1999, when Birch filed the first informal complaint against SWBT.²

This follow-up complaint is being filed only after all other avenues have been exhausted. Birch recognizes that this Commission has urged, in fact, insisted that parties work together on an operational basis to resolve differences. By this complaint, however, Birch is relying on the Commission's policy that where these efforts have been unsuccessful, this Commission is willing to step in, assist in solving the problem, and require that the parties be willing to fulfill their obligations. In supporting the need to provide relief and sort out the "process that kills the patient" later, Commissioner Walsh has stated, "If you have new CLECs who have new customers whose calls don't go

¹ In discussing the importance of ensuring that CLECs receive adequate performance from SWBT, Commissioner Walsh has warned of the potential for harm to customers and to CLECs. "And I know, Pat, you and I heard anecdotal information about difficulties of customers dealing with CLECs because of problems with underlying equipment. And I've – when you hear plenty of it here – but there's going to be huge problems in paradise if CLECs lose customers because they give bad service that they have no control over."

² Informal Complaint of Birch Telecom Ltd., L.L.P. Against Southwestern Bell Telephone Company, Docket 21000 Informal Dispute Resolution for Issues Relating to Operational Support Systems, September 7, 1999.

through, competition is harmed, and we cannot allow that to happen.”³ Birch respectfully requests that the Commission take such action here.

EXECUTIVE SUMMARY

Since filing the original complaint in Docket 21000 in September 1999, Birch has worked with SWBT to resolve operational issues across the conference room table, instead of in the Commissioner’s Hearing Room. While working with SWBT in this manner has produced positive results with regard to some issues, Birch has had to continue to work through and manage other significant customer-affecting and competition-affecting performance. SWBT’s performance has worsened over time and the operational collaborative approaches to problem solving have simply proved ineffective.

It is this customer and competition affecting performance that is the subject of this complaint. Specifically, the immediate issues that led to the filing of this complaint are as follows:

- ***SWBT is actually introducing error on 36% of the orders SWBT touches.*** For those LSRs that SWBT’s systems are unable to process electronically, and are thus manually re-entered by SWBT’s LSC, SWBT introduces error. Because SWBT’s system is unable to process approximately [REDACTED] of Birch’s orders electronically, SWBT slams Birch’s customers, fails to include telephone numbers, removes ordered features, etc., for approximately [REDACTED] of all of Birch’s customers’ orders.

³ Open Meeting Transcript, August 26, 1999 at 138.

- ***The frequency of a host of additional ordering and provisioning failures is again on the rise and operational efforts have not been successful in resolving these issues.*** These issues include an increasing number of orders placed in jeopardy status, customers experiencing loss of dial tone at conversion, and unexplained cancellations of Birch orders as a result of actions taken by SWBT field personnel.
- ***SWBT failed to meet its commitment to provide Customer Service Records (“2733 CSRs”) on 58% of Birch’s requests submitted during April and May 2000.*** Birch is unable to meet the product needs of its prospective customers when SWBT fails to timely provide the CSR.
- ***The manner by which SWBT has implemented system modifications has crippled Birch’s operations with successive changes to SWBT’s legacy and OSS system releases.*** In each of these instances, the problem either affected only CLEC UNE orders or has had a significantly disproportionate effect on CLEC orders.

Birch’s customers, operations (time, money and personnel requirements resulting from SWBT’s poor performance), and Birch’s reputation, are all suffering significant damage. Birch’s end-user customers continue to suffer from diminished service quality that in many documented cases results in a switch back to SWBT. To mitigate the effects of SWBT’s failure to perform, Birch continues to dedicate its own personnel to handling customer troubles, double checking SWBT’s work, and otherwise attempting to “save” customer accounts returning to SWBT because of SWBT’s poor performance and field personnel’s derogatory statements. Of course, as Birch tries to enter new markets,

especially smaller Texas markets,⁴ Birch is suffering significant blows to its reputation for the SWBT-caused poor performance.

Birch has raised and attempted to resolve each of these issues with SWBT on an operational basis prior to requesting Commission assistance. Each of these issues has been the subject of diligent efforts by both parties, including daily and weekly conference calls, and joint analysis of orders to determine a root cause and resolve the problem. Finally, these are not isolated instances. Rather, these issues have persisted over months, and indeed, have worsened even as Birch has worked with SWBT to collect and analyze data to confirm these results.

Birch respectfully requests that the Commission act swiftly and firmly so that additional delays and excuses for poor performance are not tolerated, and these operational issues are remedied as soon as possible.

PROCEDURAL BACKGROUND

Suffering from significant operational issues with SWBT, Birch filed an informal complaint in this Project on September 7, 1999. In an effort to resolve these problems, Commission Staff conducted both in person meetings and conference calls with the parties. In addition, Birch and SWBT committed to conducting operational conference calls commensurate with SWBT's performance (e.g., weekly calls, twice a week, and even daily calls) to monitor SWBT customer-affecting performance. Birch has taken meeting minutes and shared them with SWBT for their input and concurrence.

⁴ It is important to note the "everyone knows everything going on with everyone in the town" quality of smaller towns. When Birch provides a customer with SWBT-caused poor performance, the entire community will hear only that Birch provided bad service – not that SWBT was the cause. Particularly where SWBT's service representatives are making derogatory comments about the level of attention customers would get with SWBT versus with Birch, it is hard to see how competition, and thus, the customers are not being injured. *See infra* at 16.

While Birch has experienced improvement in LSC services with regard to some issues, the attached records illustrate the continuing and escalating problems for which Birch is seeking the Commission's assistance in this complaint. Examples of individual order problems have been addressed with the SWBT LSC in weekly conference calls and documented in meeting notes over this time period. See Attachment A. Despite the escalated level of attention these problems have been receiving as they have worsened, SWBT's performance has failed to improve, and in fact, has worsened over the last sixty days.

These problems are either not represented in the performance measurements or are only partially reflected. Because the task of compiling the data order by order is extremely time-intensive, the parties have agreed to pull sample sets and analyze those for trends. It is on these samples and the performance measurement data (where the activity is only partially reflected) that this complaint is based.

THE CURRENT COMPLAINT

Birch seeks the Commission's assistance in resolving these operation-halting, customer-impacting problems. These problems can be categorized as ordering and provisioning issues, pre-ordering issues, and OSS system changes and deficiencies. Specifically, these problems include SWBT's introduction of errors into Birch's orders; SWBT's failure to timely resolve problems with the delivery of 2733 CSRs; and SWBT's failure to control for human errors associated with system releases or alternatively continuously flawed software testing and release practices.

I. ORDERING AND PROVISIONING ISSUES

A. SWBT's Introduction of Errors

SWBT is currently introducing error on approximately 36% of the orders it touches. Because SWBT's systems are unable to process over [REDACTED] of Birch's orders electronically, and are thus manually re-entered by SWBT's LSC, SWBT is negatively impacting approximately [REDACTED] of all of Birch's customers' orders. That is, SWBT slams Birch's customers (by typing the wrong PIC), misses telephone numbers to be migrated to Birch, removes ordered features, etc., on approximately [REDACTED] of all of Birch's customers' orders.

As Birch's operations groups suffered through the deluge of problems and Birch was unable to convince SWBT to resolve these problems, the volume and severity of problems persisted despite joint problem-solving efforts with the LSC over the last six months. Thus, Birch undertook the incredibly resource-intensive gathering of data to reliably quantify the extent and nature of the problems. Birch's hope was that the presence of objective data upon which the parties could agree would induce SWBT to move forward with correcting the performance. Instead, in the face of this data, SWBT's performance has deteriorated further, and more time has passed during which both Birch's customers and Birch's operations have been severely damaged.

1. Data Investigation

Service impacting problems as a result of SWBT's ordering errors are only partially reflected in Performance Measurement 35, Trouble Report Within 10 Days of Conversion, and there are no other performance measurements that directly capture

ordering errors made by the LSC. In order to provide objective verifiable data, Birch took a sample of Local Service Requests (LSRs) that fell out to the LSC for manual processing and compared them line by line to the SORD service order ("C" order only) entered by an LSC representative. See Attachment B.

a. The April 2000 Sample and Analysis

By comparing the Local Service Requests ("LSRs") Birch submitted to SWBT to the SORD "C" service orders manually created by the LSC, Birch determined that 23% of the LSRs submitted by Birch and re-entered by the LSC contained one or more LSC introduced errors.⁵ The data from this sample is included as Attachment C. A review of this data shows that the LSC errors include, for example, problems as significant as the following: incorrect PIC codes which result in the customer having the wrong long distance carrier; missing telephone numbers; and missing or inaccurate USOCs, which result in the customer being billed for services it did not order, and Birch being billed for services for which the customer is not being charged. These SWBT caused errors affected approximately [REDACTED] of Birch's total orders.⁶

Upon the conclusion of this study, Birch met via conference call with LSC and LOC executive management to share the results of Birch's analysis and discuss avenues for immediate resolution. Birch noted that these issues are not new problems.⁷ While

⁵ Birch pulled a sample of 237 LSRs that had fallen out to the LSC for manual handling during the time period between April 17, 2000 through April 21, 2000.

⁶ From an analysis of raw data used for January, 2000 Performance Measurements, it was determined that [REDACTED] of all Birch LSRs fall out to the LSC for manual processing. Approximately [REDACTED] are MOG-eligible and [REDACTED] are non-MOG-eligible. When this error rate (23%) is applied against the population of orders that fall-out to the LSC for manual processing [REDACTED], Birch calculated that SWBT's manual order errors affected approximately [REDACTED] of Birch's total orders.

⁷ Indeed, provisioning accuracy issues were raised during the meetings held on Birch's original complaint. The Summary of Proceedings of the in person meetings between SWBT and Birch held before

SWBT has consistently reported that they have instituted quality control measures and better training, Birch concluded that either SWBT's methods are ineffective or they are not implementing them correctly as alarming numbers of Birch's orders continue to suffer from SWBT's introduction of errors.

Again, as in September and November 1999, Carla Rowland, Vice President of Interconnection Services, SWBT, assured Birch that the LSC was committed to fixing the problems through implementation of quality assurance programs. Ms. Rowland requested an opportunity to further examine the specific performance to identify and correct additional root causes. In an effort to work cooperatively with SWBT and avoid regulatory intervention, Birch agreed to continue collaborative efforts to implement quality assurance measures.⁸

A month after the April conference call with LSC and LOC executive management, Birch requested another conference call with the same parties. Birch expressed extreme dissatisfaction regarding the lack of improvement since the last call, particularly as Birch provided its statistically reliable evidence of poor performance by the LSC. SWBT's representative, Medrick Rodgers, Director of the LSC, stated that

the Commission identifies this as an issue. "Another concern that we addressed having to do with the number of orders that are not flowing through the system or falling out are causing provisioning accuracy problems ... So approximately – whatever it is – 20 percent is attributable to manual handling of the orders in the LSC." Project 21000, Summary of Proceedings, Tr. At 4 (11/10/99). Attachment E is a copy of the document identifying examples of SWBT's ordering accuracy errors. It is sad to note that when Birch raised these issues before, it continued to stress the importance of both short-term relief and long-term relief. Birch cannot help but find SWBT's commitments to quality and process improvements useless if they do not alleviate the actual problems.

⁸ In the ensuing weeks, Birch and the LSC participated in intensive daily conference calls to review those specific order related problems that Birch provisioners were unable to resolve through the normal channels. As of mid-June, nearly [REDACTED] orders have been reviewed in these sessions and in many cases, it is taking this group two to three business days to solve each customer problem. Attachment D is a listing of the order issues that have had to be taken to this group for resolution.

quality assurance measures were in place at the LSC.⁹ Birch reiterated that whatever these quality assurance measures are, they are clearly not adequate to prevent SWBT from introducing error on nearly one-quarter of every order the LSC touches.

Also during this call, representatives from the LOC reported that the LOC was undertaking a formalized quality program, "EQT," to assess provisioning related problems and issues associated with responsive resolution. Even though these problems have persisted since November of 1999, SWBT claimed that this quality program would require 90 days to complete. Birch expressed its appreciation for this initiative, but reiterated the urgent need for immediate relief as Birch's customers and business simply cannot afford to continue to wait for SWBT to provide reasonable service.

b. The May 2000 Sample and Analysis

The following day, on May 23, 2000, during the parties' weekly conference call, Medrick Rodgers expressed the desire to take another sample and conduct analysis of Birch's trouble tickets. Birch's Director of ILEC Carrier Relations, Ms. Patricia Kettler, initially opposed the effort noting that the specific root cause problem, LSC order entry errors, had already been clearly defined and all the resources would be better spent fixing the problem than trying to re-identify it. Mr. Rodgers asserted that the LSC's existing quality programs had been reinforced since Birch's initial study, and an additional study would alleviate the parties' concerns by demonstrating the LSC's improvement. In

⁹ After failing to see improvement in SWBT's ordering accuracy, Birch requested an outline of the quality program(s) SWBT committed to implementing, the timeframe for results, and the impacts/issues the program(s) would influence on May 16, 2000. To date, SWBT has still not provided a written response to this request.

reliance on Mr. Rodgers's assertions, Birch agreed to expend the resources to participate in another analysis.¹⁰

The results are staggering. Instead of showing improvement, the analysis confirmed what Birch's operations group had been saying: SWBT's performance had actually deteriorated further. Specifically, the analysis proved that SWBT introduced error on 36% of Birch's customers' orders that it touched. This means that SWBT's LSC order entry errors are negatively impacting [REDACTED] of Birch's total order volume – a 5 percentage point increase in the error rate in less than two months!¹¹ This problem is clearly getting worse – not better as suggested by SWBT.

2. History of SWBT's Ordering Errors

SWBT's failure to provide proper ordering accuracy is not a new issue. In fact, SWBT's introduction of errors was identified in the proceedings to resolve Birch's initial complaint. Just as SWBT has stated that the CLECs are responsible for their errors, Birch notes that there is nothing it can do to reduce SWBT's LSC ordering errors. Further, Birch's customers and business cannot afford to continue to accept SWBT's soft explanations of hiring new people, training new people, and waiting and waiting and waiting. Birch needs these service issues resolved now.

Even SWBT has recognized the implications of errors, and in cases where SWBT believes the errors to be caused by the CLECs, SWBT has committed to providing the

¹⁰ The study was conducted over 10 consecutive business days from 5/26 through 6/9. A random sampling of 100 orders that fell out to the LSC for manual processing were analyzed. Birch and SWBT LSC representatives examined and compared the LSR to the SORD service order and identified, discussed and agreed upon order errors. Attachment F is a copy of the agreed-upon study guidelines and study results.

¹¹ When the SWBT error rate of 36% is applied to the total number of orders that require LSC manual intervention [REDACTED], it was calculated that the LSC's order entry errors are negatively affecting [REDACTED] of Birch's total order volume.

CLEC with information to resolve these errors.¹² But SWBT has consistently failed to reduce the errors it introduces. Whether it is because SWBT has not enhanced its own processes, its training is inadequate, or it is inadequately staffed, Birch is left with no way to correct the problem and no way to appease its customers.

B. Other Ordering and Provisioning Issues

The attention and analysis paid to SWBT's ordering errors over the last several weeks have also uncovered additional issues; issues which alarm Birch because of the nature or increasing frequency of the events. Birch is experiencing a dramatic increase in missed due dates, loss of dial tone at conversion, and other customer-affecting problems.

1. Move Orders

Since June 1, 2000, 26% of Birch's total move orders with a completion date prior to June 20, 2000, have been problematic, often resulting in a missed due date to the customer and / or customer outages.¹³

2. SWBT Field Technicians Canceling Orders

Over the last week, SWBT field personnel have "cancelled" several Birch orders with neither cause nor authorization from Birch. It is undisputed that field personnel, who support both retail and wholesale operations, should not be able to "touch" a Birch order.

¹² "The LSC offers on-going feedback to provide our CLEC customers with a better understanding of the errors and to enhance both of our processes and flows...We are assisting in that process; however, it is the CLECs responsibility to discuss with their end user any issue regarding their service. A timeframe for ultimate resolution of the error is therefore determined by the CLEC." SWBT Handout, October 13, 1998.

¹³ Where SWBT has missed the due date, Birch has not received sufficient, if any, prior notification with which Birch could prepare the customer for the delay in spite of Birch's consistent follow-up with LSC personnel to check on the status of customers' orders. Because Birch believes that the frequency of problems is increasing, Birch has been compelled to devote additional resources to tracking this performance and undertaking another root cause analysis.

3. Jeopardies / Loss of Dial Tone

Birch is receiving significant volumes of downstream provisioning problems resulting from an inappropriately (and consistently) high number of jeopardies (approximately [REDACTED]). Many of Birch's reported downstream provisioning related problems reported to the LSC indicate that when a Birch customer order is placed in Jeopardy status, the due dates are not changed on all related orders (C, N and D). This failure has caused customers to lose dial tone as well as other confounding problems. For example, SWBT's failure to place the D order in Jeopardy status results in a loss of dial tone to the customer.¹⁴

C. Impact of SWBT's Ordering and Provisioning Errors

The competitive impact is chilling. SWBT's apparent inability to process (order and provision) Birch's customers' orders accurately results in severe customer-affecting and competition-affecting consequences.

- Birch's customers receive poor, if any, service.
- Birch's operations are grinding to a halt.
- Birch's provisioning group is paralyzed as multiple representatives are taken off of processing new orders in order to check SWBT's work.

¹⁴ The critical loss of dial tone issue is not unfamiliar to Birch. The Commission will recall the focus of Birch's original complaint was the inordinately high rate of lost dial tone. This is yet another issue that has forced Birch to devote resources to tracking this poor performance and undertaking another root cause analysis. It should also be noted that this Jeopardy process was implemented earlier this year in association with a Change Management release, without prior notification to or input from CLECs. Following notification and implementation, Birch formally expressed its concerns about the risks associated with this additional MANUAL approach.

- Birch's trouble resolution department and customer service call center are swamped with the results of SWBT's errors.
- Birch's management personnel are forced to manage the enormous volume of SWBT's errors instead of taking care of new business.
- Birch's sales team is forced to spend its time trying to "save" accounts that SWBT's performance has jeopardized.
- Birch is suffering significant financial losses as a result of SWBT's failure to perform.
- Birch's market entry into new and smaller Texas markets is severely compromised.

1. Customer Impact

In many cases, customers are not willing to put up with the incorrect PIC, the missing telephone numbers and the missing features. These customers choose to go back to SWBT via the SWBT Retail win-back process. Of course, when customers experiencing significant outages contact SWBT, the situation is exacerbated by SWBT's representatives making derogatory comments about Birch's service. Beyond telling customers that their service can be restored if they switch to SWBT that day instead of having to wait days for SWBT to correct the service for Birch (itself absolutely inappropriate), some of Birch's previous customers report that SWBT's representatives have gone so far as to assert that the customer's service issues will only be a priority if they are a SWBT customer, but they will "sit on the back burner" if they obtain their service with Birch. See Attachment G.

This is not the first time that SWBT's representatives have been reported as having made such comments to Birch's customers. Given that customers are understandably reluctant to get in the middle, it is impossible to know just how often SWBT's representatives further injure competition in this egregious way.

2. Operational Impacts

The impacts to Birch's business are growing in significance and severity. First, as multiple Birch representatives are taken off of processing new orders in order to check SWBT's accuracy, Birch's provisioning group suffers from the loss of Birch's trained personnel. A specific example is that Birch has been forced to pull two supervisors from their regular duties and exclusively assign them to double checking SWBT's work by reviewing every service order that "falls out" to the LSC because the systems cannot process them electronically. Further, Birch's trouble resolution and billing groups are swamped with the consequences of SWBT's errors. Of course, the drain on Birch's management resources is significant as management is forced to manage the enormous volumes of SWBT's errors as opposed to taking care of managing new business and their staff.

An often over-looked consequence is that instead of signing up new customers, Birch's sales team is forced to spend its time trying to "save" accounts that SWBT's performance has jeopardized. For example, Birch's Vice President of Sales – Texas has spent nearly 100% of his time over the last several weeks trying to help his field sales organization "save" accounts threatening to return to SWBT due to all the provisioning problems at conversion.

3. Financial Impacts

SWBT's ineptitude has real, concrete financial effects on Birch's business. In addition to the enormous administrative costs of Birch's personnel working on reviewing SWBT's work, correcting SWBT's errors, and attempting to save Birch's accounts, when customers return to SWBT the financial impact is even more staggering. For example, Birch has begun a review of the multi-line account disconnections in May listed on SWBT-provided Local Disconnect Report to determine the cause of the disconnection.¹⁵ One hundred percent of the orders that have been reviewed thus far experienced difficulties during and / or shortly after conversion to Birch's service.¹⁶ Birch estimates that its loss for the confirmed SWBT win-back accounts in the month of May 2000 to be approximately [REDACTED].¹⁷

4. Effect on Market Entry and Reputation

Particularly as Birch enters some of the smaller Texas markets, Birch's reputation has been marred. This effect is discussed at greater length in Section III below.

¹⁵ This report is provided by SWBT and lists those accounts that had some or all lines disconnected from Birch service. The disconnect orders associated with these customers could have been submitted by Birch, another CLEC, or SWBT Winback.

¹⁶ During the month of May 2000, a total of [REDACTED] accounts were listed on this report of which [REDACTED] were more than one line (out of a total 3100 [REDACTED] LSRs completed by SWBT). Birch has completed a review of 65 of those [REDACTED]. All 65 customers experienced difficulties during and/or shortly after conversion to Birch that were so severe they chose to leave Birch's service. Attachment H profiles a sample of five customers who returned to SWBT as a result of problems encountered during conversion and/or shortly after conversion. Again, only some of these accounts will be reflected in the performance measurements.

¹⁷ Birch's preliminary estimate is that each of these lost customers represents an average loss of about [REDACTED]. This estimate includes both the cost of sales and the lost revenue over the average life cycle of the customer. Of course, the cost for just those confirmed win-back accounts in the sample is far more than all the penalties received thus far in the year 2000.

II. TIMELY RECEIPT OF CUSTOMER SERVICE RECORDS (“2733”)

A. The Importance of Timely Retrieval of 2733s

No one disputes the importance of being able to retrieve Customer Service Records (“CSRs”) in a timely manner.¹⁸ It is commonly known that prior to completing an LSR, one must obtain information from the CSR; thus timely retrieval of this information is critical. SWBT’s systems do not permit electronic retrieval of CSRs for accounts with SWBT-defined “complex” services. Instead, these CSRs (referred to as “2733 Reports”) must be requested manually from the LSC.

B. SWBT Is Failing to Meet Its Commitment

As Birch has tried to launch new services in Texas, Birch has been unable to submit LSRs in accordance with customers’ orders because SWBT has failed to return the 2733 Report that contains information that must be contained on the LSR. Given the competitive effect of being unable to launch this service, Birch has been trying to work this issue with SWBT since April 2000. See Attachment A, Issue #038-042000. Although SWBT’s LSC committed to providing 98% of Birch’s requested 2733s within 24 hours, SWBT has repeatedly failed to comply with its own commitments. In May 2000, Birch documented that only 58% of our requests were being provided within these agreed upon guidelines. See Attachment E.

C. Impact to Birch’s Ability to Launch New Products

Because of all the difficulties associated with obtaining 2733s, Birch has delayed production level introduction of [REDACTED] in its existing markets despite the

¹⁸ Both the Texas Commission as well as the Federal Communications Commission (“FCC”) have recognized the necessity of being able to timely access Customer Service Records. See Project 16251, Final Staff Report on Collaborative Process, November 18, 1998.

tremendous backlog of demand / sales orders. Since [REDACTED] customers are typically larger, high revenue accounts that demand responsive service, this backlog has already resulted in distancing customers who anticipated migrating to Birch's service in the April / May timeframe. Birch cannot afford this loss of customer good will so early in the customer relationship.

III. SWBT's FAILURE TO CONSIDER CLEC ORDERS IN MAKING AND TESTING SYSTEM CHANGES

A. History

Over the last 6 months, there have been three major OSS and two legacy system software releases that have negatively affected Birch's ability to order and provision services for our customers. Listed below is a summary of these changes and the negative impacts on CLEC orders. It is worth repeating – these issues affected only CLEC orders in any magnitude.

1. October/November 1999 Legacy System Software Release

Because SWBT failed to test for UNE-P conversion orders, SWBT's modification to the MARCH™ module (a legacy system) caused all Birch customers' orders containing hunting that are served off a DMS-100 to lose dial tone.¹⁹

2. January 2000 OSS/Change Management Release

SWBT's failure to consider UNE Orders in its testing of the LIDB update process resulted in a loss of all UNE-P LIDB update transactions in process prior to the release.²⁰

¹⁹ This debacle was discussed at length in the Affidavit of Richard L. Tidwell and Patricia Ann Kettler to the FCC in FCC Docket 00-04.

²⁰ With over 600 orders in process as of the LIDB release, the process to manually inventory and complete manual updates took over two weeks. During this time, the customers' information was incorrect and the customers' calling features were limited because of SWBT's failures.

3. March 2000 OSS/Change Management Release

This release provided loop pre-qualification functionality. Numerous problems were identified by the CLEC community and there have been approximately three “emergency” releases since this March 2000 Release to address the problems.²¹

4. May 2000 OSS/Change Management Release

With this release, the processing of Birch’s orders was brought to a halt.²² Of course, because SWBT’s testing environment does not adequately replicate the production environment, CLEC testing did not uncover the error. Because SWBT’s test inappropriately used the “code” (as opposed to “requirements”) to develop test cases, SWBT’s testing also did not uncover the error.

5. June 2000 SORD Legacy System Release

The LSC reported that a legacy system update in early June was the root cause of the high incidence of severe problems at conversion, e.g., complete loss of dial tone, inability to originate calls, missed due dates, and disconnect messages on in-bound calls.²³

²¹ Although the business impacts to Birch have been negligible due to the fact that we are not yet in the production stage of ordering DSL loops, the events support Birch’s underlying concerns.

²² All Birch orders on the first business day following this release and most orders from the last business day prior to this release were rejected and could not be processed because of SWBT’s failure to update the tables correctly.

²³ See Attachment A from Daily Conference Calls, June 1-June 16 for a few examples of these problems. Since the initial report of problems with the legacy system upgrade, Birch has received several different explanations, including problems with the AIN-SMS. Most recently, Birch was informed that a software modification was made to the Local Serving Office field on the service order record, and this change caused all Birch orders to error out in SOAC, a legacy system service order tracking module. SWBT has reported that the problem affected at least [REDACTED] Birch orders, roughly [REDACTED] lines.

B. Birch's Prevention Efforts

Birch is an active participant in the Change Management Process ("CMP") and through this process has repeatedly attempted to address Birch's concerns regarding the quality of OSS software releases and legacy system changes which appear to impact only UNE orders.²⁴ Birch contends that these problems are primarily attributable to inadequate testing and/or flawed test procedures, and has stated so in several CMP meetings and in comments submitted regarding the May 2000 OSS release. Following the problems last year and the January 2000 OSS release, SWBT provided repeated assurances that wholesale UNE orders were and would continue to be adequately tested, whenever legacy and OSS system modifications were made. Given the significant, customer-affecting problems, Birch is not convinced.²⁵

While SWBT readily admits to the SWBT's representatives' "human errors" made during the May 2000 OSS release, SWBT has no incentive to ensure that its system changes appropriately consider CLEC orders. CLECs are totally dependent upon SWBT to adequately test software modifications, since access to a production-like test environment is not provided by SWBT to the CLEC community. This is especially true for legacy system changes. There are absolutely no consequences to SWBT for major system release failures and hence, there is little if any motivation to minimize problems or maximize quality.

²⁴ The problems encountered as a result of legacy system changes have been confirmed by SBC to have affected UNE orders only, i.e., not resale or retail.

²⁵ For example, based on the information provided regarding the June 2000 event, if wholesale orders had in fact been tested, the problem would have clearly been discovered, and then presumably avoided, since all orders would have errored-out as they did in production.

C. Impacts of SWBT's Failure to Consider CLEC Orders

Beyond the harm to the customer, the operational impact of lost provisioning and personnel time, the financial impact of lost customers and lost revenues, Birch's market entry has been severely jeopardized. For example, the problems caused by SWBT's untested June legacy system update were coincident with Birch's initial market entry in [REDACTED]. Several major and influential accounts were lost as a consequence of this system problem.²⁶ The information contained in Attachment H references one such customer, [REDACTED].

As a result, Birch's reputation in the [REDACTED] market has been marred by the horrendous experiences of several major customers, caused by the legacy system problem earlier this month. While difficult to quantify, the "cost" of damage to the Birch brand, and to Birch's reputation as a service provider, is about as serious as it gets.

IV. CONCLUSION & RELIEF REQUESTED

The bottom line is this – SWBT cannot be permitted to introduce such egregious errors in ordering and provisioning Birch's orders. And as Birch's consistent and cooperative efforts over the last eight months show, Birch is neither interested in micro-managing SWBT's operations nor in reducing every operational issue to a regulatory showdown. However, Birch cannot survive this treatment.

A. For All Customer-Impacting Issues

For all customer-impacting issues, SWBT should be required to provide a letter to Birch that Birch can provide to its customers explaining that the service issues experienced were due to SWBT's failure – not Birch's. While such an approach will

²⁶ One of the problems affecting numerous customers caused by this system failure was a complete loss of dial tone at conversion.

certainly not cure the damage that has been done to Birch, it may alleviate some of the problems caused by the fact that customers will never know, nor care that it was not Birch who caused their problem. To the extent SWBT claims that these issues can affect its own orders as well, the explanation should state that as well. Additionally, SWBT should refund all non-recurring fees charged to Birch for these customers' service regardless of whether the customers have returned to SWBT.

B. SWBT's Ordering Errors

At a minimum, given the persistence of these issues and the grave effect it is having on Birch's operations, Birch believes it is appropriate that SWBT volunteer to pay Birch for the Birch personnel that have had to be pulled from their normal duties and dedicated to checking SWBT's work. Birch believes that the only way to ensure that SWBT's LSC does not continue to introduce errors is to automate the processing of Birch's electronically submitted errors.

Birch believes that since Birch has exhausted the available avenues for relief both operationally and by bringing the previous complaint, Birch believes that it has no choice but to seek a regulatory mandate to implement mechanization of these orders. While Birch continues to be an active participant in the change management and OSS Plan of Record process, Birch is concerned that a majority of SWBT's resources will be dedicated to developing the 13 state common platform, a requirement of the SBC – Ameritech Merger Conditions. As a result, additional system fixes and enhancements will be delayed in the SWBT five state region until the satisfaction of this Condition.

While Birch firmly believes it highly unlikely that anything short of mechanizing the processing of these orders will be a satisfactory long term solution, ultimately, Birch does not care what SWBT does to ensure that it processes orders correctly – only that it does so.

C. SWBT's Failure to Timely Provide the CSR (2733 Report).

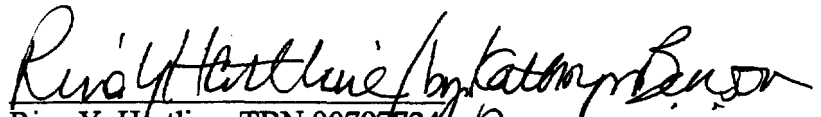
Birch looks to the Commission to direct SWBT to effectively act to resolve problems on a timely basis. This issue is but one example of where, at a minimum, SWBT should be directed to comply with its own negotiated response intervals. Birch believes that SWBT should also provide this essential report electronically in order to meet parity guidelines.

D. SWBT's System Changes

In addition to the customer explanation letters and refund of charges, SWBT should be required to test for CLEC orders before implementing changes to its systems, whether legacy or not, and CLECs should be provided with a production-like environment in which they, too, can test the system prior to a production release. Birch contends that without formidable consequences, SWBT will fail to take adequate measures to ensure that new software releases do not negatively impact Birch's operations.

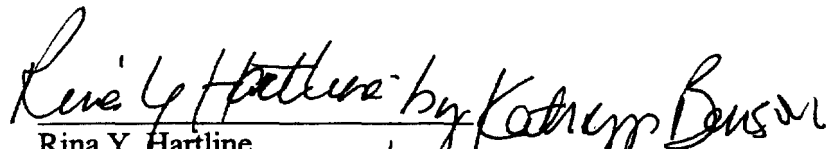
Birch appreciates the Commission's assistance in resolving these issues.

Respectfully submitted,


Rina Y. Hartline, TBN 00797724 *By permission*
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CERTIFICATE OF SERVICE

I, Rina Y. Hartline, Director of State Regulation for Birch Telecom, Inc., certify that a true and correct copy of this document was served upon Cynthia Malone, Attorney for Southwestern Bell Telephone Company via hand delivery and first class mail on this, the 26th day of June, 2000.


Rina Y. Hartline *by permission*


THE STATE OF KANSAS §
COUNTY OF Johnson §

AFFIDAVIT OF PATRICIA KETTLER


Patricia Kettler, being first duly sworn, deposes and states as follows:

1. My name is Patricia Kettler. I am the Director of ILEC Carrier Relations for Birch Telecom of Texas, Ltd., LLP ("Birch Telecom").
2. I am over twenty-one (21) years of age, have never been convicted of a crime, and am otherwise fully competent to make this Affidavit.
3. I have personal knowledge of the daily operations of Birch Telecom, including ordering and provisioning processes necessary for Birch Telecom to order services and facilities from Southwestern Bell Telephone Company in Texas.
4. I have personal knowledge of all the facts contained in the attached Complaint and verify that all are true and correct.

Further, Affiant sayeth not.


Patricia Kettler

SUBSCRIBED AND SWORN TO before me on this the 23 day of June, 2000.


NOTARY, IN AND FOR THE
STATE OF KANSAS

ERICA LEWIS
PRINTED NAME

My Commission expires: _____

ERICA LEWIS Notary Public • State of Kansas My Appt. Expires <u>Oct 4, 2002</u>
